



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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FINAL MINUTES FOR THE REGULAR SESSION MEETING

Held at 9:00 a.m. on October 13, 2004, and 8:00 a.m. on October 14, 2004,
9535 E. Doubletree Ranch Road • Scottsdale, Arizona

Board Members

Edward J. Schwager, M.D., Chair
Sharon B. Megdal, Ph.D., Vice Chair
Robert P. Goldfarb, M.D., Secretary
Patrick N. Connell, M.D.
Ingrid E. Haas, M.D.
Tim B. Hunter, M.D.
Becky Jordan
Ram R. Krishna, M.D.
Douglas D. Lee, M.D.
William R. Martin III, M.D.
Dona Pardo, Ph.D., R.N.
Chris Wertheim

Board Counsel

Christine Cassetta, Assistant Attorney General

Staff

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director
Barbara Kane, Assistant Director
Beatriz Garcia Stamps, M.D., M.B.A., Board Medical Director
Gary Oglesby, Chief Information Officer
Tricia Steffey, Board Coordinator
Susan Ahn, Legal Coordinator

WEDNESDAY, October 13, 2004

CALL TO ORDER

Edward J. Schwager, M.D., Chair, called the meeting to order at 9:00 a.m.

ROLL CALL

The following Board Members were present: Edward J. Schwager, M.D., Sharon B. Megdal, Ph.D., Robert P. Goldfarb, M.D., Patrick N. Connell, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin, III, M.D., Dona Pardo, Ph.D., R.N., and Chris Wertheim.

CALL TO THE PUBLIC

Statements issued during the call to the public appear beneath the case referenced.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
1.	MD-03-0651A	AMB L. ALFONSO MUNOZ, M.D.	9794	Advisory Letter for failure to maintain adequate records. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

FORMAL INTERVIEWS (Continued) – L. ALFONSO MUNOZ, M.D.

L. Alfonso Munoz, M.D., appeared before the Board with his attorney, Paul J. Giancola, Esq. Douglas D. Lee, M.D. and William R. Martin, III, M.D., stated that they know Dr. Munoz, but that will not affect their ability to adjudicate this case.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Munoz inappropriately performed a laparoscopic appendectomy. Dr. Kennell stated that the medical records for this patient show little evidence to suggest the need for surgical intervention and that a more appropriate course of treatment would have been a period of observation.

Dr. Munoz made a statement to the Board. He stated that the patient had symptoms that would be attributed to appendicitis. The patient also had sufficient clinical symptoms and clinical findings to justify a diagnostic laparoscopy.

William R. Martin, III, M.D., presenting Board Member, began the questioning of Dr. Munoz. Dr. Munoz reviewed the symptoms of appendicitis and the accepted standard of care. Dr. Munoz explained that the decision to perform a laparoscopy was based on the clinical symptoms and the patient's two-month history of abdominal pain. Dr. Munoz explained that a conservative course of observation was not taken due to the severity of the patient's abdominal pain. Dr. Martin asked Dr. Munoz if the patient's records clearly illustrate the severity of the patient's pain and medical history. Dr. Munoz answered that the elements are documented in the records, however they are not documented extensively.

The Board Members began questioning Dr. Munoz. Robert P. Goldfarb, M.D., asked Dr. Kennell if performing a laparoscopy is part of the work-up process. Dr. Kennell stated that a laparoscopy is not an urgent procedure and should be carefully considered. Dr. Munoz agreed with Dr. Kennell. Dr. Munoz clarified, for Patrick N. Connell, M.D., that the appendix was identified on the computed tomography (CT) scan.

Mr. Giancola made a statement to the Board on behalf of Dr. Munoz. Mr. Giancola referred the Board Members to a letter of support from Joseph P. Kennelly, M.D., and the three literature references that were submitted to the Board. Mr. Giancola stated that Dr. Munoz made a reasonable medical judgment.

Dr. Martin stated that Dr. Munoz made a judgment call to operate on the patient. However, the emergency room records do not illustrate an immediate necessity for the procedure. Therefore, Dr. Martin recommended an advisory letter for inadequate recordkeeping.

MOTION: William R. Martin, III, M.D., moved to issue an Advisory Letter for failure to maintain adequate records. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Robert P. Goldfarb, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
2.	MD-03-0646A	AMB	L. ALFONSO MUNOZ, M.D.	9794	Dismissed.

L. Alfonso Munoz, M.D., appeared before the Board with his attorney, Paul J. Giancola, Esq. Douglas D. Lee, M.D. and William R. Martin, III, M.D., stated that they know Dr. Munoz, but that will not affect their ability to adjudicate this case.

William Kennell, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Munoz improperly used a combination of drains at the time of the second surgery, demonstrating lack of understanding and that Dr. Munoz improperly timed the performance of the second surgery. Dr. Kennell stated that this case involved a 49 year-old patient who was re-admitted to the hospital approximately five days after a standard laparoscopic cholecystectomy for a bile leak and an accumulation of bile in the gallbladder area. An Endoscopic Retrograde Cholangio-Pancreatography (ERCP) was performed and Dr. Munoz proceeded with surgery to place multiple drains. Generally, once an ERCP has been performed and drainage has been established, most patients recover without surgical intervention.

Dr. Munoz made a statement to the Board. He stated that the patient presented with severe abdominal pain and white cell count of 14,000. The computed tomography (CT) scan showed a collection of fluid and he was concerned that the patient was forming an infection and possibly an abscess, which the radiology report could not exclude. Due to those concerns, Dr. Munoz stated that he performed the laparoscopy and placed four different drains. Dr. Munoz explained that he placed the different types of

FORMAL INTERVIEWS (Continued) – L. ALFONSO MUNOZ, M.D.

drains to ensure that if one drain failed, another drain would function. Dr. Munoz also stated that the ERCP would not have sufficed to control the situation because the patient continued to leak bile. Dr. Munoz stated that he provided appropriate treatment for this patient.

Douglas D. Lee, M.D., presenting Board Member, began questioning Dr. Munoz. Dr. Munoz reviewed the typical procedure for a bile leak with Dr. Lee and reiterated his concern about the collection of fluid. Dr. Lee questioned the urgency to perform the laparoscopy and the lack of documentation to illustrate such urgency. Dr. Munoz agreed that there was a lack of documentation. Dr. Munoz stated that he does not routinely use different types of drains. However, in this case, he was concerned that a drain would fail because the previous drain had failed.

Mr. Giancola made a statement to the Board on behalf of Dr. Munoz. Mr. Giancola ensured the Board Members that Dr. Munoz is improving on his documentation. This case ended in a favorable outcome and the patient has not experienced any further complications.

Dr. Lee stated that the timing of the second laparoscopy is controversial and expressed his concern for Dr. Munoz's lack of documentation, but believes that Dr. Munoz will focus more on this area.

Motion: Patrick N. Connell, M.D., moved to dismiss the case.

SECONDED: Tim B. Hunter, M.D.

Tim B. Hunter, M.D., stated that the operative note clearly reflects that there was a considerable amount of fluid and performing the operation was a reasonable approach.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
3.	MD-03-0368A	AMB	TODD J. DAVIS, M.D.	28454	Advisory Letter for failure to correctly interpret an abnormal EKG in a young patient with chest pain. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Todd J. Davis, M.D., appeared before the Board with his attorney, Donald H. Smith, Esq.

Philip Scheerer, M.D., Board Medical Consultant, reviewed this case with the Board. This case was returned from the April 2004 Board Meeting at the request of the Board. The allegation is that Dr. Davis failed to diagnose an acute myocardial infarction in a patient presenting in the emergency room with chest pain.

Dr. Davis made a statement to the Board. He stated that an electrocardiogram (EKG) was preformed to rule out possible benign, early repolarization for this patient who had presented with nonspecific complaints.

Patrick N. Connell, M.D., presenting Board Member, began the questioning of Dr. Davis. Dr. Davis interpreted the EKG for the Board, at the request of Dr. Connell. Dr. Davis stated that he now recognizes the myocardial infarction on the EKG. Dr. Davis reviewed the patient's symptoms and clarified for Dr. Connell that a patient can have a normal EKG and have an acute coronary syndrome or early infarction in evolution. Dr. Connell pointed out that this patient had only one of the five major risk factors for coronary disease.

The Board Members began questioning Dr. Davis. Tim B. Hunter, M.D., asked how Dr. Davis has changed his practice. Dr. Davis answered that he has taken additional educational courses in EKG and emergency medicine.

Mr. Smith made a statement to the Board on behalf of Dr. Davis. Mr. Smith stated that Dr. Davis has been very forthright with him and the Board during this investigation. He also stated that this was an error, but Dr. Davis has addressed it and is confident that Dr. Davis has learned from this situation.

MOTION: Patrick N. Connell, M.D., moved to issue an Advisory Letter for failure to correctly interpret an abnormal EKG in a young patient with chest pain.

SECONDED: Douglas D. Lee, M.D.

FORMAL INTERVIEWS (Continued) – TODD J. DAVIS, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
4.	MD-03-0968A	AMB	SHELDON EPSTEIN, M.D.	4811	Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for failure to protect the airway during administration of an anesthetic.

Sheldon Epstein, M.D., appeared before the Board with his attorney, Judith Berman, Esq. William R. Martin, III, M.D., recused himself from this matter.

Robert Barricks, M.D., Board Medical Consultant, reviewed this case with the Board. The allegation is that Dr. Epstein failed to provide appropriate anesthetic care resulting in permanent injury.

Dr. Epstein made a statement to the Board. He stated that he made an error in judgment in the care of the patient and accepts the responsibility. Dr. Epstein stated that it is his routine to intubate hernia patients. He did not intubate the patient because of the preoperative guidance and comments that were made by the surgeon. Also, the patient reported that she had not eaten in three to four days. Dr. Epstein stated that this incident happened over four years ago and he has since changed his anesthesia practice by no longer taking night emergency cases and strives for good communication with patients and surgeons.

Douglas D. Lee, M.D., presenting Board Member, began the questioning of Dr. Epstein. Dr. Epstein reviewed his routine regarding the pre-operative work up that he performs for patients and his treatment of this patient. He also reviewed the anesthesia record for this patient. Dr. Lee questioned Dr. Epstein's use of a muscle relaxant and laryngeal mask airway (LMA) when intubating this patient.

The Board Members began questioning Dr. Epstein. Dr. Epstein clarified for Ram R. Krishna, M.D., that he had interviewed the patient pre-operatively, but he did not have the opportunity to review the patient's emergency room records prior to surgery. Dr. Epstein clarified for Dr. Lee that he believes the risk is not increased for regurgitation with use of muscle relaxants.

Ms. Berman made a statement to the Board on behalf of Dr. Epstein. Ms. Berman stated that this has been Dr. Epstein's only incident in his twenty-one year career and asked that the Board issue an Advisory Letter.

Dr. Lee stated that the standard of care in this case would have been to secure the airway with a cuffed endotracheal tube. Dr. Lee recommended that the Board support a finding of Unprofessional Conduct for failure to protect the airway during administration of an anesthetic in violation of A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, and (ll) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

MOTION: Douglas D. Lee, M.D., moved for a finding of Unprofessional Conduct for failure to protect the airway during administration of an anesthetic in violation of A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, and (ll) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

SECONDED: Patrick N. Connell, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

MOTION: Douglas D. Lee, M.D., moved that Board Staff Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for failure to protect the airway during administration of an anesthetic.

SECONDED: Sharon B. Megdal, Ph.D.

Tim B. Hunter, M.D., spoke against the motion stating that this was a one-time occurrence and Dr. Epstein has demonstrated great anesthesia knowledge and patient care. Dr. Hunter stated that he would support an Advisory Letter. Sharon B. Megdal, Ph.D., stated that this Board needs to make a judgment based on this particular case and that the Board does not have a policy for a physician to receive an Advisory Letter because it is a one-time occurrence.

FORMAL INTERVIEWS (Continued) - SHELDON EPSTEIN, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Member voted against the motion: Tim B. Hunter, M.D. The following Board Member was recused from the motion: William R. Martin, III, M.D.

VOTE: 10-yay, 1-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NON TIME SPECIFIC ITEMS

Board Officer Roles

Sharon B. Megdal, Ph.D., stated that the Board Officer's assigned roles have been working effectively. The role of the Vice Chair is to fill in when the Chair is not present, or must recuse him or herself. The role of the Secretary is to conduct roll call and fill in when both Chair and Vice-Chair are not available.

Christine Cassetta, Assistant Attorney General, added that there are other statutory powers of the Chair, including the ability to form Committees. Also, the Chair controls the agenda and is the contact person for the Attorney General's Office when necessary..

MOTION: Douglas D. Lee, M.D., moved to acknowledge the Board Officer Roles as stated above.

SECOND: Ram R. Krishna, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Process for Succession of Officers

Christine Cassetta, Assistant Attorney General, stated that the succession of Officers is at the discretion of the Board and the process may be established as needed.

Nomination of Board Officers

Election of Officers

Edward J. Schwager, M.D., stated that the statutes indicate that the Board elects its own Officers.

MOTION: Tim B. Hunter, M.D., moved to re-elect the current Officers to serve another term and to hold a special election in the event that Edward J. Schwager, M.D., is not re-appointed by the Governor.

SECONDED: Douglas D. Lee, M.D.

Dr. Schwager verified that Sharon B. Megdal, Ph.D. and Robert P. Goldfarb, M.D., would electively serve as Vice Chair and Secretary, respectively.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL HEARING MATTERS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
65.	MD-04-0057A	AMB LAWRENCE E. PRITCHARD, M.D.	19260	Stayed Revocation. Suspension for not more than one year from the effective date of the Order, during which time Dr. Pritchard must successfully complete an inpatient treatment program and immediately enter the Board's Monitored Aftercare Program for five years from his date of entry. Dr. Pritchard shall reimburse the Board for the formal hearing costs incurred within one year of the effective date of the order.

D.P. made a statement to the Board at the call to the public and spoke in support of Dr. Pritchard. D.P. stated that Dr. Pritchard had an evaluation, through Betty Ford Center, and has not taken any medication since that evaluation. D.P. asked that the Board grant Dr. Pritchard's request for a second opinion.

Stephen Wolf, Assistant Attorney General, asked that the Board adopt the recommended Administrative Law Judge (ALJ) Findings of Fact, Conclusions of Law and Order with the following two changes:

- Deletion of Finding of Fact number 8, last sentence.

FORMAL HEARING MATTERS (Continued) - LAWRENCE E. PRITCHARD, M.D.

- Paragraph 1 of the Order, Page 10: Amend to read, “respondent shall successfully complete a board approved inpatient treatment program and promptly apply for admission into the board’s Monitored Aftercare Program in accordance with the board’s usual procedure.”
- Paragraph 2 of the Order, Page 10: Change the word “entered” to “be accepted into”.

Lawrence Pritchard, M.D, appeared before the Board without legal counsel. Dr. Prichard stated that he would like to keep his license active. He asked that the Board allow him to enter an accredited chemical dependency facility of his choice for a second opinion. Dr. Prichard also commented that he has not practiced medicine for six years and would like the Board’s record to show that he was not employed at the time his license was suspended. He asked the Board to allow him to go to an inpatient treatment facility of his choice, because the Board only recognizes five facilities.

Mr. Wolf stated that although Dr. Pritchard did not have an office practice, he was self-prescribing and prescribing to friends and acquaintances, which is considered practicing medicine. Mr. Wolf also stated that the Board only recognizes those few facilities specializing in the treatment of impaired physicians and professionals that have a good success rates in treating and preventing relapses.

Christine Cassetta, Board Counsel, recommended the following changes to the Findings of Fact:

- Paragraph 1: add “licensing and regulating” in the first sentence between “for” and “the”
- Paragraph 8: Delete last sentence based on State’s Exhibit 12 (page 9) that states this conduct was not unprofessional
- Paragraph 11: correct the spelling of “L-O-M-O-T-T-L” to “L-O-M-O-T-I-L”
- Paragraphs 23 and 40: the word “treatment” should be changed to “evaluation” based on State’s Exhibit 5

MOTION: Tim B. Hunter, M.D., moved to adopt the Findings of Fact as recommended by the Administrative Law Judge with the corrections as stated above.

SECONDED: Patrick N. Connell, M.D.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

Ms. Cassetta recommended the following changes to the Conclusions of Law:

- Paragraph 4, line 2: change the word “stipulation” to “stipulated”
- Paragraph 4, line 4: Delete last sentence.
- Paragraph 10: Delete
- Paragraph 11: Amend to read, “Respondent may be charged the costs of formal hearing in this matter. A.R.S. § 32-1451 (M)

MOTION: Tim B. Hunter, M.D., moved to adopt the Conclusions of Law as recommended by the Administrative Law Judge with the corrections as stated above.

SECONDED: William R. Martin, III, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absented

MOTION PASSED.

MOTION: Patrick N. Connell, M.D., moved to adopt the ALJ recommended Order with the changes submitted by Christine Cassetta, Board Counsel, and with the additional following revision to paragraph 8 of the Order: “Respondent shall pay the cost within one year of the effective date of the order”.

SECONDED: William R. Martin, III, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

NON-TIME SPECIFIC ITEMS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
5.	MD-03-0730A	AMB JAMES C. CORD, M.D.	21540	Dismissed.

This case was pulled from the block vote for individual consideration.

NON-TIME SPECIFIC ITEMS (Continued) - JAMES C. CORD, M.D.

James C. Cord, M.D., made a statement at the call to the public. He stated that an anonymous complainant filed this complaint with the Board. The patient involved did not file the complaint. Dr. Cord referred the Board Members to a letter from the patient that expressed gratitude for the care he provided. He also referred to a letter submitted by the Medical Staff President of Payson Regional Medical Center stating that there was no deviation from the standard of care in this case. Dr. Cord described the difficulties he incurred with the diagnoses of this patient and stated that since surgery, the patient fully recovered.

Holly Gieszl, legal counsel for Dr. Cord, made a statement at the call to the public. Ms. Gieszl stated that this is an unusual case clinically. Also, that it is one of many anonymous complaints made to the Board from the same institution at the same time. Ms. Gieszl stated that Dr. Cord's care of this patient was appropriate, the diagnosis was timely, and there was not a failure of work-up. She urged the Board to dismiss this case.

MOTION: Robert P. Goldfarb, M.D., moved to dismiss this case.

SECONDED: Ram R. Krishna, M.D.

Sharon B. Megdal, Ph.D., stated that this is a brief anonymous complaint and that anonymous complainants should be required to include more documentation. William R. Martin III, M.D., agreed with Dr. Megdal, however, many patients and citizens are illiterate and requiring such documentation may make filing a complaint difficult. Dr. Martin suggested finding a way that encompasses all citizens.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
9.	MD-04-0165A	J.H.	MOHAMMAD A. SHAKIR, M.D.	29303	Dismissed.

This case was pulled from the block vote for individual consideration.

Kraig Marton, counsel for Dr. Shakir, made a statement at the call to the public. Mr. Marton stated that Board Staff's recommendation for an Advisory Letter is inappropriate. He stated that Dr. Shakir did not breach confidentiality by sending the patient's records to a disability carrier. The patient checked the box on the intake form that instructed the physician to not send anything regarding alcohol abuse. Although the patient's records referred to alcohol dependency, they did not say anything about alcohol abuse, which is different from dependency. Mr. Marton stated that Dr. Shakir did not do anything wrong and urged the Board to dismiss this case.

Edward J. Schwager, M.D., stated that the Health Insurance Portability and Accountability Act (HIPAA) law does not require a signed consent to send records to other physician's involved in a patient's care.

MOTION: Edward J. Schwager, M.D., moved to dismiss this case.

SECONDED: Sharon B. Megdal, Ph.D.

Robert P. Goldfarb, M.D., spoke against the motion stating that this particular case has to do with a disability request by an employer, which does not have the same immunity under HIPAA. Dr. Goldfarb also stated the records that were sent mentioned chronic narcotic dependency, even though the patient requested that this type of information not be released. Tim B. Hunter, M.D., addressed the issue of a physician's responsibility to redact specific information from voluminous records. Dr. Goldfarb reminded the Board that HIPAA is a federal law and physicians have to respect the law.

VOTE: 7-yay, 4-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
10.	MD-04-0578A	AMB	ANDREW D. SAAL, M.D.	28402	Advisory Letter for failing to timely file the necessary notice of supervision application and supervising a physician assistant without prior Board approval. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., stated that this was an oversight by a physician, who did not file a supervisor's application for a Physician Assistant (PA) for several months. This was an inadvertent problem due to the departure of an office employee. As soon as the physician became aware of the oversight, the application was filed.

NON-TIME SPECIFIC ITEMS (Continued) - ANDREW D. SAAL, M.D.**MOTION: Robert P. Goldfarb, M.D., moved to dismiss.****SECONDED: Sharon B. Megdal, Ph.D.**

Ram R. Krishna, M.D., spoke against the motion stating that the physician is ultimately responsible for the filing of applications. Sarah Penttinen, Senior Medical Investigator, clarified for Edward J. Schwager, M.D., that the PA involved in this case was investigated and received an Advisory Letter for failure to notify the Board of her supervisory status. Sharon B. Megdal, Ph.D., stated that this case shows extenuating circumstances and that she would support the motion for dismissal.

VOTE: 6-yay, 6-nay, 0-abstain/recuse, 0-absent**MOTION FAILED.**

MOTION: Ram R. Krishna, M.D., moved to issue an Advisory Letter for failure to timely file the necessary notice of supervision application and supervising a physician assistant without prior Board approval. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Becky Jordon**VOTE: 7-yay, 5-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
12.	MD-04-0064A	J.C.	THANES J. VANIG, M.D.	24745	Dismissed.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., stated that it was not necessary for Dr. Vanig to forward the entire medical record to the other treating physician. All pertinent information was sent.

MOTION: Robert P. Goldfarb, M.D., moved to dismiss this case.**SECONDED: Ram R. Krishna, M.D.**

Christine Cassetta, Board Counsel, clarified for Douglas D. Lee, M.D., that the statute states "failing to make patient medical records promptly available".

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent**MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
18.	MD-03-1311A	D.S.	GREGORY R. WHITE, M.D.	25430	Dismissed.
	MD-03-1311B		STEPHEN MILLINER, M.D.	14420	

This case was pulled from the block vote for individual consideration. William R. Martin, III, M.D., recused himself from this matter.

Gregory R. White, M.D., made a statement at the call to the public. Dr. White stated that he acted in the best interest of this patient and urged the Board to not issue an Advisory Letter. He stated that he was not involved in the emergency care of this patient, because he was out of town at the time. His care with this patient involved a phone call with the patient's father. At that time, he did not feel that the patient had a re-fracture and he stated that the family seemed comfortable with the plan that was outlined during the telephone conversation.

D.S. made a statement at the call to the public. He stated that his daughter broke her femur in a skiing accident while vacationing in California. D.S. stated that he made multiple phone calls attempting to make an appointment with Dr. White because his daughter was experiencing a great deal of pain, but could not get in. Since Dr. White was out of town, the physician who was covering for Dr. White advised him to tighten the fixator himself, with a wrench, and call again next week to schedule an appointment. D.S. did not follow this advice and took his daughter to the emergency room instead. D.S. stated that Dr. White did not meet the standard of care and an Advisory Letter would be appropriate.

Tim B. Hunter, M.D., stated that the issue is the physicians' inattentiveness to the family's request regarding the patient's discomfort. Robert P. Goldfarb, M.D., restated the facts of this case for the Board. Ram R. Krishna, M.D., stated that Dr. White should have responded to the patients concern, but it was not necessary for the patient to be seen right away.

MOTION: Ram R. Krishna, M.D., moved to dismiss both cases.**SECONDED: Becky Jordon**

NON-TIME SPECIFIC ITEMS (Continued) - GREGORY R. WHITE, M.D., STEPHEN MILLINER, M.D.

Edward J. Schwager, M.D., expressed concern regarding the lack of response from the physicians. Ingrid E. Haas, M.D., made note that the patient's care was turned over to Dr. Milliner while Dr. White was out of town, therefore she recommended that the cases be dealt with separately. Dr. Schwager stated that the cases would be divided.

MOTION: Ram R. Krishna, M.D., moved to dismiss case number MD-03-1311A, pertaining to Gregory R. White, M.D.

SECONDED: Becky Jordan

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

MOTION: Ram R. Krishna, M.D., moved to dismiss case number MD-03-1311B, pertaining to Stephen Milliner, M.D.

SECONDED: Becky Jordan

Dr. Krishna explained, to the Board Members, the standard of care for using an allen wrench to adjust a fixator and stated that the fracture would not be jeopardized by the adjustments.

VOTE: 5-yay, 4-nay, 3-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
19.	MD-03-0130B	AMB	ROBERT J. GUERRA, M.D.	10189	Invite Physician for Formal Interview.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., and Tim B. Hunter, M.D., recused themselves from this matter.

Becky Jordan stated that an Advisory Letter does not seem sufficient for this case. Ingrid E. Haas, M.D., stated that the physician was unable to obtain a colonoscopy report, yet proceeded to surgery. Dr. Haas questioned the urgency.

MOTION: Ram R. Krishna, M.D., moved to invite Dr. Guerra for a formal interview.

SECONDED: Ingrid E. Haas, M.D.

VOTE: 10-yay, 0-nay, 2-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
21.	MD-03-0567A	AMB	M. MANNY TAFAZOLI, M.D.	24092	Advisory Letter for failing to diagnose a lytic lesion of the talus. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

This case was pulled from the block vote for individual consideration. Becky Jordan commented on the fact that other treating physicians treated this patient for a cyst, without recognizing the cancer. Ram R. Krishna, M.D., explained that cancers of the foot and ankle are extremely rare and that a biopsy is generally performed to confirm diagnosis.

MOTION: Becky Jordan moved to issue an Advisory Letter for failing to diagnose a lytic lesion of the talus. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: William R. Martin, III, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
22.	MD-04-0084A	J.C.	PAUL R. COULOMBE, M.D.	21251	Advisory Letter for initiating testosterone therapy without performing the requisite digital exam of the prostate and a PSA. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., stated that this case involved a physician who failed to follow procedure and failed to perform appropriate tests. Dr. Goldfarb expressed his concern that Dr. Coulombe may require additional training. Christine Cassetta, Board Counsel, clarified for the Board that Dr. Coulombe's previous Board Order involved conduct that occurred before this incident, but was issued after this incident. Ram R. Krishna, M.D., confirmed that Dr. Coulombe has had continuing medical education (CME) since the treatment of this patient. Edward J. Schwager, M.D., stated that giving testosterone to a patient with prostate cancer could cause harm.

NON-TIME SPECIFIC ITEMS (Continued) - PAUL R. COULOMBE, M.D.**MOTION: Robert P. Goldfarb, M.D., moved to invite Dr. Coulombe for a formal interview.****SECONDED: Ram R. Krishna, M.D.**

Sharon B. Megdal, Ph.D., asked for clarification regarding a comment in the Staff Investigational Review Committee (SIRC) report that indicated the report was changed. Barbara Kane, Assistant Director, clarified that the case was re-sent to the Outside Medical Consultant for clarification of his report. Dr. Megdal recommended that the wording of future SIRC reports be revised for more clarification.

Rudolf Kirschner, M.D., Board Medical Consultant, stated that the allegation is that Dr. Coulombe failed to perform the prostate examination and order a prostate-specific antigen (PSA) prior to initiating testosterone therapy. Dr. Coulombe admitted in his narrative response that he failed to do this. Robert P. Goldfarb, M.D., withdrew his motion.

MOTION: Sharon B. Megdal, Ph.D., moved to issue an Advisory Letter for initiating testosterone therapy without performing the requisite digital exam of the prostate and prostate-specific antigen. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.**SECONDED: Douglas D. Lee, M.D.****VOTE: 11-yay, 1-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

William R. Martin, III, M.D., made a statement regarding the clarification of staff reports and asked staff to consider clarifying the amendments made to reports.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
24.	MD-04-0114A	F.H.	ELLEN J. GUSTAFSON, M.D.	18895	Advisory Letter for delay in the diagnosis of recurrent metastatic breast carcinoma. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

This case was pulled from the block vote for individual consideration. Tim B. Hunter, M.D., recused himself from this matter. Becky Jordan stated that she had reservations regarding the history of Dr. Gustafson. Christine Cassetta, Board Counsel, noted that prior dismissed cases could not be considered when reviewing this case.

MOTION: Sharon B. Megdal, Ph.D., moved to issue an Advisory Letter for delay in the diagnosis of recurrent metastatic breast carcinoma. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.**SECONDED: Patrick N. Connell, M.D.****VOTE: 10-yay, 1-nay, 1-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
26.	MD-03-1235A	AMB	MOHAMMED H. NOMAAN, M.D.	12111	Dismissed.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., recused himself from this matter. Edward J. Schwager, M.D., stated that he knows Dr. Nomaan, but that will not affect his ability to adjudicate this case.

Mohammed Nomaan, M.D., made a statement at the call to the public. He stated that the recommendation for an Advisory Letter is unfair and unnecessary. This complaint is geared toward the telephone triage system that was utilized correctly. Dr. Nomaan stated that the phone system meets the standard of care and is accepted and endorsed by the American Academy of Pediatrics. Dr. Nomaan stated that the Staff Investigative Review Committee (SIRC) report states that the standard of care requires that all triage telephone messages should be reviewed and signed by a supervising physician. Dr. Nomaan stated that this would be very impractical and very difficult to implement.

MOTION: William R. Martin, III, M.D., moved to dismiss this case.**SECONDED: Douglas D. Lee, M.D.**

Rudolf Kirschner, M.D., Board Medical Consultant, stated that Dr. Nomaan followed the triage procedure, however the documentation of the phone call was not adequate. Sharon B. Megdal, Ph.D., spoke against the motion and stated that the issue of this case is recordkeeping.

NON-TIME SPECIFIC ITEMS (Continued) – MOHAMMED H. NOMAAN, M.D.**VOTE: 6-yay, 5-nay, 1-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
28.	MD-03-1086A	AMB	SHIRLEY H. CHOW, M.D.	26564	Dismissed.

This case was pulled from the block vote for individual consideration. Robert P. Goldfarb, M.D., reviewed the facts of this case and stated that the radiology report was sufficient. Tim B. Hunter, M.D., agreed and stated that he found nothing wrong with the radiology report.

MOTION: Tim B. Hunter, M.D., moved to dismiss this case.**SECONDED: Patrick N. Connell, M.D.****VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
6.	MD-04-0618A	AMB	CARLOS J. LOPEZ, M.D.	27821	Advisory Letter for failure to timely complete his medical chart. A.R.S. § 32-1401(3)(b) – The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
7.	MD-03-0284A	S.J.	MITCHELL J. GIANGOBBE, M.D.	23204	Advisory Letter for failure to adequately document the location of the lesion to be excised. A.R.S. § 32-1401(3)(b) – The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
8.	MD-04-0509A	AMB	TIMOTHY A. JOHNS, M.D.	14272	Advisory Letter for failure to timely complete his medical charts. A.R.S. § 32-1401(3)(b) – The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
11.	MD-04-0686A	E.J.	SAUL AMBER, M.D.	10916	Advisory Letter for failure to timely release a complete copy of the patient's records. A.R.S. § 32-1401(3)(b) – The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
13.	MD-04-0071A	C.P.	THOMAS F. MERTINS, M.D.	29257	Advisory Letter for failure to document the need for follow-up CT scan. A.R.S. § 32-1401(3)(b) – The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

C.P. made a statement at the call to the public. C.P. stated that her husband died on December 14, 2003, of lung cancer. She stated that a simple breathing test would have shown that her husband had less than 40 percent normal lung capacity. Dr. Mertins informed them that his x-rays were normal, when they were not. Dr. Mertins did not make a diagnosis and refused to refer them to a specialist. An out of state specialist later diagnosed her husband and began treatment. C.P. stated that Dr. Mertins should have followed up with a CT scan, which could have prevented a delay in his treatment.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
14.	MD-04-0089A	R.V.	LEE N. NOLD, M.D.	14704	Advisory Letter for misreading of films due to a systems error. A.R.S. § 32-1401(3)(a) – While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.
15.	MD-03-1102A	AMB	VICTOR N. ALVARADO, M.D.	21995	Advisory Letter for failure to evaluate hematemesis during first hospitalization and failure to reference skin that previously had been described as having a rash, in physical exam performed during second hospitalization. A.R.S. § 32-1401(3)(b) – The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
16.	MD-03-0400A	AMB	SUDEEP S. PUNIA, M.D.	20224	Advisory Letter for signing a pre-dated prescription form for a controlled substance. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
17.	MD-03-1083A	D.W.	ORLANDO CABRERA, M.D.	9011	Advisory Letter for prescribing a benzodiazepine to a patient with a history of addiction problems. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

D.W. made a statement at the call to the public. He stated that Dr. Cabrera prescribed Valium to him, despite his prior history of addiction and suicide attempts. Dr. Cabrera lied about prescribing the Valium and did not indicate the prescription in his records. D.W. also expressed his concern that Dr. Cabrera prescribed Buspar and Trazodone together. When D.W. ran out of his prescribed Trazodone, Dr. Cabrera refused to refill the prescription.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
20.	MD-04-0172A	AMB	ROYAL B. ANSPACH, M.D.	8995	Advisory Letter for injury to the spinal accessory nerve. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
23.	MD-04-0619A	AMB	MICHAEL A. ANGELES, M.D.	30628	Advisory Letter for failure to complete patient medical records. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
25.	MD-03-0491A	AMB	MICHELE B. SHACKELFORD, M.D.	25735	Advisory Letter for failure to perform an adequate evaluation of a wrist injury. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Tim B. Hunter, M.D., recused himself from this matter.

Kari Zangerle, legal counsel for Dr. Shackelford, made a statement at the call to the public. Ms. Zangerle stated that the information communicated to Dr. Shackelford by the patient is what led her to reach her diagnosis. The patient failed to inform Dr. Shackelford that he suffered a traumatic blunt injury. Ms. Zangerle stated that it is part of Dr. Shackelford's normal examination to palpate the arm, which was done during this patient's examination, although it is not documented in her records. Ms. Zangerle disagreed with the Staff Investigational Review Committee (SIRC) report that states that Dr. Shackelford admitted to not palpating the arm in the Investigational Interview with Board Staff. She also disagreed with the SIRC report that stated that if she had palpated the arm, the fracture would have been identified. The Board has been provided with consultant opinions and evidence that this is not true. The SIRC report also states that the outcome of failure to diagnose was compartment syndrome, when there is no evidence that the patient ever had compartment syndrome. Ms. Zangerle urged the Board to dismiss this case.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
27.	MD-04-0287A	W.O.	MARZBAN M. HAYYERI, M.D.	28018	Advisory Letter for failing to provide appropriate postoperative care. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

MOTION: Patrick N. Connell, M.D., moved to issue an Advisory Letter for cases numbers 5 through 28, except case numbers 5, 9, 10, 12, 18, 19, 21, 22, 24, 26, and 28, which were discussed individually.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

The meeting adjourned at 5:11 p.m.

THURSDAY, October 14, 2004

CALL TO ORDER

Edward J. Schwager, M.D., Chair, called the meeting to order at 8:00 a.m.

ROLL CALL

The following Board Members were present: Edward J. Schwager, M.D., Sharon B. Megdal, Ph.D., Robert P. Goldfarb, M.D., Patrick N. Connell, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., William R. Martin, III, M.D., Dona Pardo, Ph.D., R.N., and Chris Wertheim.

CALL TO THE PUBLIC

Statements issued during the call to the public appear beneath the case referenced.

FORMAL HEARING MATTERS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
66.	MD-03-0084A	AMB RACHEL M. SCHACHT, M.D.	30018	Adopt the ALJ recommended order to revoke Dr. Schacht's license effective immediately to protect public health and safety.

Rachel M. Schacht, M.D., appeared before the Board with her attorney, Brad Armstrong, Esq.

Stephen Wolf, Assistant Attorney General, made a statement to the Board. Mr. Wolf stated that Dr. Schacht had been treated in five facilities for alcohol dependence prior to applying for an Arizona medical license. Dr. Schacht failed to disclose, to the Arizona Medical Board, on her application that she suffered from alcohol dependency. Subsequently, due to the lack of this information, the Arizona Medical Board issued Dr. Schacht a license in January 2002. In September 2002, Dr. Schacht was arrested for driving under the influence (DUI) and failed to self-report the arrest to the Board. Dr. Schacht also failed to inform the Board of this on her renewal application in December 2002. In January 2003, Dr. Schacht did report her alcohol dependence to the Board. Mr. Wolf asked that the Board adopt the Administrative Law Judges' (ALJ) Findings of Fact, Conclusions of Law, and recommended Order for revocation of Dr. Schacht's license.

Mr. Armstrong made a statement to the Board on behalf of Dr. Schacht. He agreed with the timeline of events presented by Mr. Wolf, but disagreed with the ALJ's recommended Order. He stated that there is no evidence that Dr. Schacht's ability to practice medicine was compromised or limited, which is what the question on the license application asked. Mr. Armstrong stated if the application had simply asked if she were an alcoholic, she would have been obligated to answer yes. Dr. Schacht has recognized her problem and has complied with the Board's interim consent agreement.

Mr. Wolf stated that Dr. Schacht has been unsuccessfully treated for alcohol dependency at least fourteen times. At this time, the Board cannot have confidence that Dr. Schacht can successfully conquer her problem. Given her extreme history of unsuccessful treatment, the state recommends revocation of Dr. Schacht's license.

Mr. Armstrong stated that Dr. Schacht has made great progress in her sobriety. He stated that she would be in a position to resume her practice before five years time.

MOTION: Sharon B. Megdal, Ph.D., moved to go into Executive Session at 8:22 a.m.

SECONDED: William R. Martin, III, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

The Board returned to open session at 8:26 a.m.

Edward J. Schwager, M.D., noted the following grammatical correction to the Findings of Fact:

- Paragraph 58, first sentence: add the word "was" between "she" and "going".

MOTION: Sharon B. Megdal, Ph.D., moved to adopt the Findings of Fact recommended by the Administrative Law Judge with the grammatical correction stated above.

SECONDED: Tim B. Hunter, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL HEARING MATTERS (Continued) - RACHEL M. SCHACHT, M.D.

MOTION: Sharon B. Megdal, Ph.D., moved to adopt the **Conclusions of Law** recommended by the Administrative Law Judge.

SECONDED: Douglas D. Lee, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

MOTION: Sharon B. Megdal, Ph.D., moved to adopt the **Order** as recommended by the Administrative Law Judge to **revoke Dr. Schacht's license effective immediately to protect public health and safety.**

SECONDED: Chris Wertheim

Sharon B. Megdal, Ph.D., stated that this is a sad and difficult case. She is concerned with the physician's multiple DUI's and troublesome profile. Dr. Megdal stated that Dr. Schacht had many chances to complete inpatient treatment and has demonstrated unsuccessful completion. Another chance would not be warranted. After five years, Dr. Schacht will have another opportunity to reapply for licensure. Patrick N. Connell, M.D. and William R. Martin, III, M.D., spoke in favor of the motion and agreed with Dr. Megdal statements. Dr. Martin also stated that at this point, it is the Board's responsibility to protect the public.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: **Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim.**

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL INTERVIEWS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
67.	MD-03-0179A	G.G.	ARNOLD B. CALICA, M.D.	12548	Advisory Letter for incomplete preoperative discussion of treatment options prior to surgery. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

Arnold B. Calica, M.D., appeared before the Board with his attorney, Paul J. Giancola, Esq. Robert P. Goldfarb, M.D., recused himself from this matter.

Beatriz Garcia Stamps, M.D., Board Medical Director, reviewed this case with the Board. The allegations are that Dr. Calica failed to document discussion of other treatment options prior to performing surgery; failed to meet the accepted standard of care when he failed to anticipate that the procedure he was performing on the spine would lead to spinal instability; failed to take appropriate intra-operative measures to correct the instability; failed to recognize the post-operative pain to be related to spinal instability; and failed to properly interpret the post-operative findings on MRI indicative of spinal instability. Dr. Stamps stated the standard of care and deviations of this case.

Dr. Calica made a statement to the Board. He reviewed the details of this case and responded to the allegations. Dr. Calica stated that lumbar spine surgery is an area requiring considerable surgical judgment.

William R. Martin, III, M.D., presenting Board Member, began the questioning of Dr. Calica. Dr. Calica reviewed with Dr. Martin the symptoms of the patient, the procedure that was performed, and other treatment options that would have been available to this patient.

The Board Members began questioning Dr. Calica. Ram R. Krishna, M.D., questioned Dr. Calica regarding facet joints and decompression. Dr. Calica explained for Tim B. Hunter, M.D., how he would have cared for the patient post-operatively had the patient remained in his care and stated that, in hindsight, he would not have operated on this patient. He also stated that he no longer performs lumbar fusions.

Mr. Giancola made a statement to the Board on behalf of Dr. Calica. He stated that the patient had exhausted all conservative treatment and that the patient was aware of his options, as well as the risks of the procedure in question.

Dr. Martin stated that although he believes Dr. Calica is a talented and knowledgeable surgeon, Dr. Calica has a misunderstanding of the elements regarding spinal stability. Dr. Martin also stated that it is the responsibility of the surgeon to ensure that the patient has been informed of alternatives to a surgical procedure.

FORMAL INTERVIEWS (Continued) - ARNOLD B. CALICA, M.D.

MOTION: William R. Martin, III, M.D., moved to issue an Advisory Letter for incomplete preoperative discussion of treatment options prior to surgery. A.R.S. § 32-1401(3)(b) - The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

SECONDED: Ram R. Krishna, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Becky Jordan, Ram R. Krishna, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Members voted against the motion: Tim B. Hunter, M.D. and Douglas D. Lee, M.D. The following Board Member abstained from the motion: Robert P. Goldfarb, M.D.

VOTE: 9-yay, 2-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
57.	MD-03-0795A MD-03-0795B MD-03-0795C	A.W.	SAUL AMBER, M.D. JOHN W. CURTIN, M.D. NORBERTO ADAME, M.D.	10916 3809 28315	Dismissed.

This case was pulled from the block vote for individual consideration.

A.W. made a statement at the call to the public. He addressed the Board on June 9, 2004, regarding this case.. A.W. clarified for the Board that the narcotics found in M.S.'s autopsy report were prescribed. He also stated that the medication prescribed to M.S. was not adequate for someone with advanced pancreatic cancer and M.S. was in severe pain. A.W. stated the issues of this case are not due to just one physician, but rather a systematic problem. You cannot have a successful medical program if patients are shuffled between doctors and clinics only to offer fragmented care and poor communication. A.W. stated that the Board is in a position to offer a remedy for the system inadequacies.

MOTION: Ram R. Krishna, M.D., moved to dismiss these cases.

SECONDED: Patrick N. Connell, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Patrick N. Connell, M.D., stated that this tragic case is more of a system failure rather than a failure of the physicians. Each individual acted in the best of their ability and within the standard of care.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
45.	MD-04-0349A	S.B.	BRADLEY J. FOLKESTAD, M.D.	19824	Uphold Executive Director's Dismissal.

This case was pulled from the block vote for individual consideration.

S.B. made a statement at the call to the public. S.B. stated that since her hysterectomy she has experienced pelvic pain and bladder pain every day. She stated that Dr. Folkestad did not suggest any alternatives before the procedure and failed to inform her of the possible damage done following the surgery. S.B. stated that the Board medical staff was inaccurate and inconsistent with their investigation. S.B. urged the Board to wait and decide on this case until after her next surgery, when she will know whether Dr. Folkestad removed her left ovary.

J.B. spoke on behalf of his wife, S.B., at the call to the public. J.B. stated that S.B. has had to withdraw from college due to her health problems caused by Dr. Folkestad.

B.R spoke on behalf of her daughter, S.B., at the call to the public. B.R. stated that when Dr. Folkestad did not offer any alternatives to a hysterectomy, S.B. trusted his judgment because she had been seeing him for ten years. S.B. is now facing her third major surgery and has had to give up her dream of being a registered nurse due to her health problems.

Tim B. Hunter, M.D., stated that there is no indication that the patient's ovaries were removed. The fact that they weren't seen on the ultrasound does not indicate that they are not present. The question of whether or not the patient was informed of a bladder injury that occurred during surgery is an issue.

NON-TIME SPECIFIC ITEMS (Continued) - LAUREN T. BONNER, M.D.**MOTION:** Tim B. Hunter, M.D., moved to uphold the Executive Director's dismissal.**SECONDED:** Ingrid E. Haas, M.D.**VOTE:** 12-yay, 0-nay, 0-abstain/recuse, 0-absent**MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
49.	MD-04-0111A	R.S.	LAUREN T. BONNER, M.D.	31068	Uphold Executive Director's Dismissal.

This case was pulled from the block vote for individual consideration.

M.K. made a statement at the call to the public. She spoke on behalf of Dr. Bonner and stated that R.S. is not a credible source. R.S. intentionally and continuously hid her pregnancy from Dr. Bonner. Dr. Bonner continuously wrote prescriptions for R.S. and always provided information regarding the potential risk of taking the medication during pregnancy. When Dr. Bonner learned that R.S. was possibly pregnant, she immediately made note that she would no longer permit R.S. to refill her medication without confirmation of her pregnancy status. M.K. urged the Board to uphold the Executive Director's dismissal of this case.

L.M. made a statement at the call to the public, on behalf of R.S. She stated that Dr. Bonner provided substandard care and acted in gross violation of the law. L.M. stated that Dr. Bonner's sole purpose was to cover up her own bad judgment. Dr. Bonner never discussed the risk or potential harm to an unborn fetus while taking the prescribed medications. There are no records indicating that Dr. Bonner ever asked if R.S. was pregnant and did not recognize the common signs and symptoms of pregnancy. L.M. described the involvement with Child Protective Services and the complaint submitted to Behavioral Health Services. She stated that Dr. Bonner has two sets of medical records and that Dr. Bonner is not an ethical physician.

MOTION: Edward J. Schwager, M.D., moved to uphold the Executive Director's dismissal.**SECONDED:** Ram R. Krishna, M.D.**VOTE:** 12-yay, 0-nay, 0-abstain/recuse, 0-absent**MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
29.	MD-03-1267A	O.M.	BERNARD M. KUHR, M.D.	29273	Uphold Executive Director's Dismissal.
30.	MD-03-1080A	R.S.	CRAIG G. GROSS, M.D.	25493	Uphold Executive Director's Dismissal.

Edward J. Schwager, M.D., recused himself from this matter.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
31.	MD-04-0099A	S.G.	STEPHEN R. ANTHONY, M.D.	20622	Uphold Executive Director's Dismissal.
32.	MD-04-0119A MD-04-0119B	S.S.	STEVEN E. WEISMAN, M.D. CAROLYN L. KINNEY, M.D.	27717 22965	Uphold Executive Director's Dismissal.
33.	MD-04-0314A	M.R.	PHILLIP SIROTA, M.D.	29522	Uphold Executive Director's Dismissal.
34.	MD-03-1051A	J.J.	PATRICIA M. CRELLIN, M.D.	21731	Uphold Executive Director's Dismissal.
35.	MD-03-1302A	R.H.	CHARLES D. GROSE, M.D.	8087	Uphold Executive Director's Dismissal.
36.	MD-03-1275A	R.H.	EUGENE R. ALMER, M.D.	4476	Uphold Executive Director's Dismissal.
37.	MD-04-0022A	C.E.	JOHN D. MARSHALL, M.D.	10961	Uphold Executive Director's Dismissal.

John Marshall, M.D., made a statement at the call to the public. He stated that the patient wanted to start a young family, which required her to apply for new insurance that would enable her to have maternity benefits. Her applications were denied based on her numerous medical problems that required medication. Dr. Marshall and his staff spent an extraordinary amount of time with the patient, trying to help her understand the reasons for the insurance denial. Dr. Marshall stated that there was never any attempt to make any false or fraudulent statements or obtain any fee through deceit or misrepresentation. He did try to explain the patient's problems in her medical records, hoping that the insurance underwriters would favorably review her application.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
38.	MD-04-0360A	F.G.	ANN S. ANDONYAN, M.D.	29265	Uphold Executive Director's Dismissal.
39.	MD-04-0395A	V.B.	LINDA C. NEWELL, M.D.	23988	Uphold Executive Director's Dismissal.

NON-TIME SPECIFIC ITEMS (Continued) - LINDA C. NEWELL, M.D.

V.B. made a statement at the call to the public. V.B. stated that Dr. Newell did not pay attention to the basic symptoms of his complaint and sent him to the hospital, where they performed numerous unnecessary tests and instructed him to go for a lumbar puncture. V.B. did not follow this medical advice and believes that if he had, he would have died. When V.B. returned to his home country, he learned that he had high blood pressure. He stated that if he had not returned to his home country, he would have suffered from severe hypertension. V.B. stated that he has lost faith in the system.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
40.	MD-04-0253A MD-04-0253B	V.L.	DEBORAH L. LINDQUIST, M.D. ROBERT A. RUFO, M.D.	18133 31862	Uphold Executive Director's Dismissal.

Douglas D. Lee, M.D., recused himself from this matter.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
41.	MD-04-0517A	M.S.	NAYEF T. RESK, M.D.	25571	Uphold Executive Director's Dismissal.
42.	MD-03-0927A	R.B.	ALEXANDER P. CADOUX, M.D.	27029	Uphold Executive Director's Dismissal.
43.	MD-04-0329A	J.F.	RUSSELL J. BARTELS, M.D.	30114	Uphold Executive Director's Dismissal.

Gordon Lewis, legal counsel for Dr. Bartels, made a statement at the call to the public. He stated that the Executive Director's dismissal of this case was appropriate and well founded, based on the records and the investigation. Mr. Lewis asked that the Board uphold the Executive Director's dismissal.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
44.	MD-03-0948A	J.S.	SEBASTIAN B. RUGGERI, M.D.	12438	Uphold Executive Director's Dismissal.

William R. Martin III, M.D., recused himself from this matter.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
46.	MD-03-0610A	C.H.	MARC A. LETELLIER, M.D.	18410	Uphold Executive Director's Dismissal.

Robert P. Goldfarb, M.D., recused himself from this matter.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
47.	MD-04-0260A	B.H.	R. WAYNE WOOD, M.D.	9384	Uphold Executive Director's Dismissal.

Edward J. Schwager, M.D., recused himself from this matter. Robert P. Goldfarb, M.D., stated that he knows Dr. Wood, but that will not affect his ability to adjudicate this case.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
48.	MD-04-0612A	M.F.	GEOFF W. WANDRY, M.D.	25865	Uphold Executive Director's Dismissal.
50.	MD-03-1237A MD-03-1237B	A.C.	DAVID S. BURGOYNE II, M.D. LAURO AMEZCUA-PATINO, M.D.	10347 17900	Uphold Executive Director's Dismissal.
51.	MD-03-1261A	C.D.	WILLIAM E. MORA, M.D.	13088	Uphold Executive Director's Dismissal.

William R. Martin III, M.D., recused himself from this matter.

C.D. made a statement at the call to the public. She stated that when she called Board Staff for the status of this case, she was informed that she is not entitled to certain information. C.D. wants to remind Board Staff that they are public employees and that the information concerning her case is of public record and she has every right to see her records. C.D. reiterated the details of this case and stated that she is in pain every day. C.D. also asked the Board to not forget the other two open cases that are in Dr. Mora's profile.

MOTION: Ram R. Krishna, M.D., moved to uphold the Executive Director's dismissal for cases 29 through 51, except case numbers 45 and 49, which were discussed individually.

SECONDED: Dona Pardo, Ph.D., R.N.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
54.	MD-03-0475A	M.P.	CRAIG A. BITTNER, M.D.	27982	Dismissed.
55.	MD-03-0986A	C.A.	SYLVIA N. DY, M.D.	13292	Dismissed.

Sylvia Dy, M.D., made a statement at the call to the public. She stated that she treated this patient with the highest medical standard of care and had the patient's best interest at heart. She asked the Board to dismiss this case.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
56.	MD-04-0065A	B.S.	M. ANGELO TRUJILLO, M.D.	19201	Dismissed.

Douglas D. Lee, M.D., recused himself from this matter.

MOTION: Ram R. Krishna, M.D., moved to dismiss case numbers 54 through 57, except case number 57 which was discussed individually.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
58.	MD-04-1095A	M.K.	UNKNOWN	N/A	Uphold Executive Director's Administrative Closure.

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, reviewed this case with the Board. This case was originally closed administratively because the Board had no jurisdiction. An appeal of the administrative closure was filed and therefore the case is being brought to the Board to uphold the action. Christine Cassetta, Board Counsel, clarified for the Board that the complainant has the right to ask the Board to review the administrative closure.

MOTION: Ram R. Krishna, M.D., moved to uphold the Executive Director's Administrative Closure.

SECONDED: Patrick N. Connell, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
59.	MD-04-1002A	C.S.	STEVE T. ZIERER, M.D.	20445	Uphold Executive Director's Administrative Closure.

C.S. made a statement at the call to the public. C.S. stated that Dr. Zierer made an approximate two-inch tear in her esophagus and refused to accept responsibility for his actions and behavior. Dr. Zierer has expressed great anger, arrogance, and dishonesty throughout the ordeal.

Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, reviewed this case with the Board. He explained that this case was administratively closed, because it is a duplicate of a case that has already been adjudicated. Sharon B. Megdal, Ph.D., recommended that a procedure be developed to prevent a case like this from coming before the Board, since it has already been adjudicated once. Edward J. Schwager, M.D., stated that the appeal rights of the public should remain protected.

MOTION: Ram R. Krishna, M.D., moved to uphold the Executive Director's Administrative Closure.

SECONDED: Douglas D. Lee, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
60.	MD-99-0057 MD-98-0789	AMB	JOHN C. WOODS, M.D.	19005	Termination of Board Order.

Paula Arcuri, Senior Compliance Officer, reviewed this case with the Board. Ms. Arcuri stated that Dr. Woods has requested termination of his Board Order. She stated that he has complied with his Board Order and compliance staff recommends termination of his Probation.

NON-TIME SPECIFIC ITEMS (Continued) - JOHN C. WOODS, M.D.**MOTION: Ram R. Krishna, M.D., moved to terminate the Board Order.****SECONDED: Ingrid E. Haas, M.D.****VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
52.	MD-04-L081A	AMB	ALEXANDER G. KAMMER, M.D.	N/A	Uphold Appeal of ED Denial of License.

Michelle Semenjuk, Licensing Division Chief, reviewed this case with the Board. The license application was denied by the Executive Director due to quality of care issues raised by the state of Florida.

MOTION: Ram R. Krishna, M.D., moved to uphold the Executive Director's denial of license.**SECONDED: Patrick N. Connell, M.D.****VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
53.	MD-04-L120A	AMB	REINA A. WHARTON, M.D.	N/A	Uphold Appeal of ED Denial of License.

Lisa Bruning, Senior Licensing Investigator, reviewed this case with the Board. The Executive Director denied the license application because the physician was treating patients in New York without the appropriate licensure.

MOTION: Ram R. Krishna, M.D., moved to continue this investigation for further research.**SECONDED: Robert P. Goldfarb, M.D.****VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

When the Board took this matter up later in the day, Stephen Wolf, Assistant Attorney General, made a statement to the Board and provided Board Members with communication from St. Christopher-Ottillie, Dr. Wharton's previous medical employer, clarifying her duties while employed. The communication verified that Dr. Wharton performed psychiatrist evaluations and consultations under the supervision of psychiatrist.

MOTION: Ram R. Krishna, M.D., moved to uphold the Executive Director's denial of license.**SECONDED: William R. Martin, III, M.D.****VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent****MOTION PASSED.**

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
61.	MD-02-0709A	AMB	GREGORY L. PEARE, M.D.	22350	Rescind Referral to Formal Hearing and Accept the Proposed Consent Agreement as written for a Letter of Reprimand for administering the incorrect concentration of epinephrine, 1/1,000 rather than the correct concentration of 1/100,000, to patient F.M. that resulted in patient F.M.'s myocardial infarction.

Ram R. Krishna, M.D., recused himself from this matter.

MOTION: Sharon B. Megdal, Ph.D., moved to rescind referral to formal hearing and accept the proposed Consent Agreement as written.**SECONDED: Robert P. Goldfarb, M.D.**

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Edward J. Schwager, M.D., Sharon B. Megdal, Ph.D., Robert P. Goldfarb, M.D., Patrick N. Connell, M.D., Ingrid E. Haas, M.D., Tim B. Hunter, M.D., Becky Jordan, William R. Martin, III, M.D., Dona Pardo, Ph.D., R.N., and Chris Wertheim. The following Board Members abstained from the motion: Ram R. Krishna, M.D. and Douglas D. Lee, M.D.

VOTE: 10-yay, 0-nay, 2-abstain/recuse, 0-absent**MOTION PASSED.**

NON-TIME SPECIFIC ITEMS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
62.	MD-03-0777A	S.C.	LUCIO ARTEAGA, M.D.	16150
				Rescind Advisory Letter that was issued on August 23, 2004.
				Advisory Letter for inappropriate comments of a sexual nature to a patient. . A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

Lucio Arteaga, M.D., made a statement at the call to the public. He stated that S.C. lied in her complaint letter to the Board. He stated that although he did not make the comments that S.C. accuses him of making, he does regret making the comments he made thereafter. He stated that the ex-employee that was interviewed by the Board Staff was disgruntled because she was fired due to repeated tardiness. Dr. Arteaga stated that the phone call to his office from the patient's son was inappropriate. He stated that he will accept the Advisory Letter, but does not agree with the statute A.R.S. § 32-1401(26)(z)(ii).

MOTION: Sharon B. Megdal, Ph.D., moved to rescind the Advisory Letter that was issued on August 12, 2004.

SECONDED: William R. Martin, III, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

MOTION: Ram R. Krishna, M.D., moved to issue an Advisory Letter for inappropriate comments of a sexual nature to a patient. A.R.S. § 32-1401(3)(a) - While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

SECONDED: Tim B. Hunter, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
69.	MD-04-0026A	AMB	JOHN W. HOWLEY, M.D.	22390
				Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for failure to report an arrest as required by law and for habitual intemperance in the use of alcohol; Five years Probation with MAP Terms.

Douglas D. Lee, M.D., recused himself from this matter.

John W. Howley, M.D., appeared before the Board with his attorneys, Stephen W. Myers, Esq. and Neil Alden, Esq.

Wendy Nicholson, Professional Conduct Division Chief, reviewed this case with the Board. The allegations are that Dr. Howley failed to report an arrest as required by law and habitual intemperance in the use of alcohol. Ms. Nicholson stated that Dr. Howley obtained inpatient treatment at Sierra Tucson, entered into an interim consent agreement, and has fully cooperated with the Board's Monitored Aftercare Program (MAP).

Dr. Howley made a statement to the Board. He stated that he was unaware of his responsibility to report his DUI to the Board. As soon as he learned of this, he immediately contacted the Board. Dr. Howley stated that the term habitual intemperance is not appropriate.

Patrick N. Connell, M.D., began the questioning of Dr. Howley. Dr. Howley stated that after entering Sierra Tucson, he became acutely aware of potential problems related to his drinking. He explained the benefits that he received from the inpatient treatment.

Mr. Myers made a statement to the Board on behalf of Dr. Howley. He stated that the term habitual intemperance is not appropriate for Dr. Howley and that there is no sufficient evidence to support this recommendation. Mr. Meyers also stated that the statute to report an arrest was very new at the time and it was not well publicized in either the medical or legal community.

MOTION: Patrick N. Connell, M.D., moved to go to executive session at 11:08 a.m.

SECONDED: William R. Martin, III, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued) - JOHN W. HOWLEY, M.D.

The Board returned to open session at 11:20 a.m.

Dr. Connell stated that after reviewing the record and hearing the arguments he recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (f) Habitual intemperance in the use of alcohol or habitual substance abuse, and A.R.S. § 32-3208(A) A Health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.

MOTION: Patrick N. Connell, M.D., moved for a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (f) Habitual intemperance in the use of alcohol or habitual substance abuse, and A.R.S. § 32-3208(A) A Health professional who has been charged with a misdemeanor involving conduct that may affect patient safety or a felony after receiving or renewing a license or certificate must notify the health professional's regulatory board in writing within ten working days after the charge is filed.

SECONDED: Tim B. Hunter, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

MOTION: Patrick N. Connell, M.D., moved for Board Staff to Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for failure to report an arrest as required by law and for habitual intemperance in the use of alcohol and five (5) years probation with Monitored Aftercare Program Terms.

SECONDED: Tim B. Hunter, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Member was recused from the motion: Douglas D. Lee, M.D.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NON-TIME SPECIFIC MATTERS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
63.	MD-01-0495 MD-01-0720 MD-01-0750	AMB D.G. AMB NATHAN D. GOLDENTHAL, M.D.	9600	Reject the Proposed Consent Agreement for an Advisory Letter

Dean Brekke, Assistant Attorney General, reviewed this case with the Board. Mr. Brekke noted that these are old cases involving serious allegations. Tim B. Hunter, M.D. and Robert P. Goldfarb, M.D., agreed that an Advisory Letter would not be an appropriate action and that these allegations rise to the level of disciplinary action. Dr. Goldenthal is currently doing record review, not patient care. Christine Cassetta, Board Counsel, clarified that Dr. Goldenthal did not renew his license and once this matter is resolved, his license will expire and he will not be able to practice in this state without reapplying to the Board.

MOTION: Edward J. Schwager, M.D., moved to reject the proposed Consent Agreement.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Robert P. Goldfarb, M.D. clarified with Dr. Schwager that the Board would allow a formal interview as an option to resolve this matter. It is at Mr. Brekke's discretion to discuss this option with Dr. Goldenthal.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	BOARD RESOLUTION
64.	MD-00-0728	AMB JAMES U. NJEMANZE, M.D.	19235	Rescind Referral to Formal Hearing and Accept the Proposed Consent Agreement as written for an Advisory Letter for inappropriately managing a high-risk obstetric case by delaying setting up a cesarean section. While there is insufficient evidence to support disciplinary action, the Board believes that continuation of the activities that led to the investigation may result in further Board action against the licensee.

NON-TIME SPECIFIC MATTERS (Continued) - JAMES U. NJEMANZE, M.D.

Dean Brekke, Assistant Attorney General, stated that an Outside Medical Consultant and Beatriz Garcia Stamps, M.D., M.B.A., Board Medical Director had reviewed this case. Mr. Brekke and Dr. Stamps both agree that this case does not rise to the level of discipline. Dr. Stamps reviewed the details of this case with the Board.

MOTION: Tim B. Hunter, M.D., moved to rescind the referral to Formal Hearing and accept the proposed Consent Agreement as written.

SECONDED: Ram R. Krishna, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Approval of Minutes

August 27, 2004, Special Teleconference Minutes

September 8, 2004, Special On-Site Meeting

August 11-12, 2004, Executive Session Minutes

MOTION: Ram R. Krishna, M.D., moved to accept the August 27, 2004, Special Teleconference Minutes, September 8, 2004, Special On-Site Meeting Minutes and August 11-12, 2004, Executive Session Minutes as written.

SECONDED: Patrick N. Connell, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Request For Authorization To Pursue Injunction Against Illegal Practitioner Of Medicine

Ann Marie Anderson, Assistant Attorney General, gave an overview of this matter. She stated that Darryl Hronek of Platinum Laser Works, in Yuma, is using unauthorized laser equipment to remove hair and varicose veins. Mr. Hronek is not licensed to practice medicine and this type of practice is considered the practice of medicine. Ms. Anderson asked the Board for authorization to pursue injunction against an illegal practitioner of medicine. Dean Brekke, Assistant Attorney General, clarified that the costs involved will be part of the Attorney General's contract with the Arizona Medical Board to provide legal services. Additional funds will not be requested. Christine Cassetta, Board Counsel, clarified that before the Attorney General's office can file actions on behalf of the Board, the Board must authorize it.

MOTION: Sharon B. Megdal, Ph.D., moved to authorize the request to pursue injunction against illegal practitioner of medicine.

SECONDED: Tim B. Hunter, M.D.

VOTE: 11-yay, 1-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
70.	MD-03-1152A	AMB	VANCE SANDERS, M.D.	19792	Dismissed.

Vance Sanders, M.D., appeared before the Board with his attorney, Edwin M. Gaines, Esq. Edward J. Schwager, M.D., recused himself from this matter.

Rudolf Kirschner, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Sanders failed to adequately evaluate hematuria and failed to adequately supervise a Physician Assistant (PA).

Dr. Sanders made a statement to the Board. He stated that when the PA consulted him on this case, the lab work taken on the patient's first visit was not available for his review. A microscopic urinalysis evaluation was ordered, but the medical assistant did not send this to the lab promptly. Dr. Sanders stated that he was not consulted on later visits that the PA had with this patient. If he had been consulted on those visits and had seen the persistence in the hematuria, he would have ordered an imaging study. Dr. Sanders also stated that at the time this occurred, his partner was frequently out of the office and he was supervising two PA's much of the time.

Tim B. Hunter, M.D., began the questioning of Dr. Sanders. Dr. Sanders clarified for Dr. Hunter that the patient's first visit was on October 5, 1998. Dr. Sanders stated that when the patient presented with recurrent gross hematuria in April, he sent the patient to the emergency room and an imaging study was done 10 days later. Dr. Sanders agreed with Dr. Hunter that there was a delay in diagnosis, which affected the patient's prognosis. Dr. Sanders stated for Dr. Hunter that because of this case, he is quicker to order an imaging study.

FORMAL INTERVIEWS (Continued) - VANCE SANDERS, M.D.

The Board Members began questioning Dr. Sanders. Dr. Sanders clarified for Ingrid E. Haas, M.D., that if a patient has abnormal urinalysis with a negative culture, the protocol is to treat the patient with antibiotics and repeat the urinalysis three to seven days after the antibiotics have been completed. Since the medical assistant did not send the urine in for a urinalysis until two days later, this course of action was not taken.

Mr. Gaines made a statement to the Board on behalf of Dr. Sanders. He stated that, in hindsight, Dr. Sanders would do things differently and his office has changed their processes. Dr. Sanders is now more aggressive about ordering tests, PA's are better supervised, and two additional physicians have been added to the practice. Mr. Gaines also stated that Dr. Sanders had very limited involvement with this patient. His only involvement was consulting the PA on the patient's first two visits, which were two days apart. He stated that this does not warrant discipline based on Dr. Sanders limited involvement with the patient and the changes that Dr. Sanders implemented because of this case, and the fact that Dr. Sanders has not had any prior problems.

Dr. Hunter acknowledged that Dr. Sanders had limited involvement with this patient and stated that his advice to the PA was appropriate.

MOTION: Tim B. Hunter, M.D., moved to dismiss this case.

SECONDED: Ram R. Krishna, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Member was recused from the motion: Edward J. Schwager, M.D.

VOTE: 11-yay, 0-nay, 1-abstain/recuse, 0-absent

MOTION PASSED.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
71.	MD-03-0684A	AMB	VENU G. MENON, M.D.	12360	Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand action taken by another state for false information on an out of state licensure application.

Venu G. Menon, M.D., appeared before the Board without legal counsel.

Dr. Menon made a statement to the Board. Dr. Menon stated that on his Oklahoma Board of Medical License and Supervision's license application he marked that he had not had his privileges denied, when in fact he had. He stated that he did not know that his privileges had been denied. He also stated that in the State of Ohio, he his privileges were denied because of political reasons.

Wendy Nicholson, Professional Conduct Division Chief, reviewed this case with the Board. The allegation is that Dr. Menon's conduct was unprofessional in that the State of Ohio Medical Board took disciplinary action against his certificate to practice medicine and surgery, based on allegations that the Oklahoma State Board of Medical Licensure and Supervision filed and "Order Denying Reinstatement" of (Dr. Menon's) medical license.

Becky Jordan began the questioning of Dr. Menon. Ms. Jordan clarified with Dr. Menon that he had notified every state in which he holds a license that the State of Ohio Medical Board had disciplined him. Ms. Nicholson confirmed that this notification was received. Ms. Jordan asked Dr. Menon why he answered "no" to the question that read, "Have you ever been denied or had removed or suspended hospital staff privileges." Dr. Menon responded that the hospital did not renew his privileges and he did not consider this as being denied or having suspended privileges. Ms. Jordan pointed out a letter dated October 1994 that stated his privileges were terminated for medical records keeping and availability for service, a termination letter dated November 1998 due to quality of care issues, and a letter dated April 2002 stating that his privileges were removed due to patient concerns. Dr. Menon responded that he did not know of these actions.

Dr. Menon made a statement to the Board. He stated that marking "no" on the application was an honest mistake. He did not know, until a member of staff informed him, that his previous actions were considered disciplinary. It was a mistake and he regrets it.

Ms. Jordan stated that the question on the Oklahoma Board of Medical License and Supervision's license application, asking if privileges had been denied, was clear. It is also clear that Dr. Menon's privileges had been denied. Ms. Jordan recommended that the Board support a finding of Unprofessional Conduct in violation of A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine, the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds

FORMAL INTERVIEWS (Continued) - VENU G. MENON, M.D.

directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction. Ms. Jordan further stated that the Oklahoma Board of Medical License and Supervision refused to reinstate Dr. Menon's license resulting in action by the State of Ohio Medical Board. She stated that Dr. Menon's false or misleading statements on the Oklahoma Board of Medical License and Supervision's license application constitutes Unprofessional Conduct in violation of 32-1401(27) (jj) knowingly making a false or misleading statement to the Board or on a form required by the Board or in a written correspondence, including attachments, with the Board.

MOTION: Becky Jordan moved for a finding of Unprofessional Conduct under A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (o) Action that is taken against a doctor of medicine by another licensing or regulatory jurisdiction due to that doctor's mental or physical inability to engage safely in the practice of medicine, the doctor's medical incompetence or for unprofessional conduct as defined by that jurisdiction and that corresponds directly or indirectly to an act of unprofessional conduct prescribed by this paragraph. The action taken may include refusing, denying, revoking or suspending a license by that jurisdiction or a surrendering of a license to that jurisdiction, otherwise limiting, restricting or monitoring a licensee by that jurisdiction or placing a licensee on probation by that jurisdiction. (jj) knowingly making a false or misleading statement to the Board or on a form required by the Board or in a written correspondence, including attachments, with the Board.

SECONDED: Tim B. Hunter, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Ram R. Krishna, M.D., stated that not knowing the law is no excuse and the Board should be consistent with past actions. Dr. Krishna recommended that the Board support a Letter of Reprimand. Christine Cassetta, Board Counsel, confirmed that the Letter of Reprimand would be for action taken by another state for false information on an out of state licensure application.

MOTION: Ram R. Krishna, M.D., moved for Board Staff to Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for action taken by another state for false information on an out of state licensure application.

SECONDED: Tim B. Hunter, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Douglas D. Lee, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

Executive Director's Report

Edward J. Schwager, M.D., presented Barry A. Cassidy, Ph.D., P.A.-C, Executive Director, with a plaque to acknowledge his service to the Arizona medical community and public.

Agency Reports

Executive Director's Delegated Authorities Summary of Actions (July 1-August 31, 2004).

Edward J. Schwager, M.D., asked that agency reports, including licenses granted, complaints received, etc. include at least one year of prior data in order to better monitor and analyze trends.

Sub-Committee Report Regarding Executive Director Search

Sharon B. Megdal, Ph.D., gave an update on the committee, which includes Sharon B. Megdal, Ph.D., Edward J. Schwager, M.D., Ingrid E. Haas, M.D., Patrick N. Connell, M.D., and Albert Ray Tuttle, P.A.-C. Dr. Megdal announced that the Executive Director position announcement has been posted and will remain open until October 28, 2004. The committee will conduct an initial screening of applicants on November 5, 2004. Edward J. Schwager, M.D., asked Board Members if they would be available to add a half-day special meeting to the December 2004 Board Meeting to conduct interviews with the top candidates.

MOTION: Patrick N. Connell, M.D., moved to schedule a half-day special meeting on Friday, December 3, 2004, to conduct interviews.

SECONDED: Ingrid E. Haas, M.D.

VOTE: 12-yay, 0-nay, 0-abstain/recuse, 0-absent

MOTION PASSED.

FORMAL INTERVIEWS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
72.	MD-04-0285A	P.M.	RONALD E. AREBALO, M.D.	20144	Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for failure to properly evaluate and monitor a patient during cardiac stress test, resulting in respiratory arrest and Probation for one year during which Respondent must obtain 20 hours of CME in cardiac stress testing (including chemical cardiac stress testing and CME related to cardiovascular pharmacology) in addition to annual CME requirement; upon completion of the CME, the Probation will expire.

Douglas D. Lee, M.D. was not present when this matter was discussed.

P.M. made a statement to the Board. She stated that her daughter was allowed to go into full respiratory arrest due to the incompetence of Dr. Arebalo. P.M. stated that Dr. Arebalo was not present in the room during the stress test and that if he had been in the room, this would not have happened. She also stated that her daughter's respiratory problems have been exacerbated by this incident.

Ronald E. Arebalo, M.D., appeared before the Board with his attorney, Paul M. Briggs, Esq.

Philip Scheerer, M.D., Board Medical Consultant, reviewed this case with the Board. The allegations are that Dr. Arebalo failed to inform patient which medications to take prior to taking a stress test, negligently monitored patient during stress test and lacking qualifications to perform the stress test. Dr. Scheerer reviewed the standard of care for a physician supervising a cardio stress test and the deviations that occurred.

Dr. Arebalo made a statement to the Board. Dr. Arebalo stated that a cardiolyte cardiac stress test was given to the patient based on her lack of severity of asthma symptoms and that he was present during the entire test. He also stated that he is adequately trained in this area. He has been supervising these tests since 1991 and has done over 800 of them. Cardiologist, Martin Kraus, M.D., oversaw his supervision for the first six-month period.

Patrick N. Connell, M.D., began the questioning of Dr. Arebalo. Dr. Arebalo reviewed with Dr. Connell the protocol that he uses during a cardiolyte cardiac stress test. Dr. Arebalo informed Dr. Connell that there is a crash cart located outside of the room and described what materials are on the crash cart. Dr. Arebalo stated that he is trained to intubate a patient who codes, but it was not necessary to intubate this patient. Dr. Arebalo discussed with Dr. Connell the possible complications, indications of a problem and contraindications to a cardiolyte cardiac stress test. Dr. Arebalo clarified that he spoke to this patient's primary care physician (PCP) prior to the test, and that his impression was that this patient had mild asthma. Dr. Arebalo stated that there is a note in the patient's record stating that his findings of the patient's physical were normal. Dr. Connell pointed out that this note was not part of the medical records provided to the Board. Dr. Arebalo could not locate the note in his records, but stated that the patient was examined prior to the test. Dr. Arebalo stated that the patient's lungs were clear and breathing sounds were normal during this examination. Dr. Arebalo clarified for Dr. Connell that there is no protocol for dobutamine, even though the hospital form provides a space for it.

The Board Members began questioning Dr. Arebalo. Dr. Arebalo clarified for Ram R. Krishna, M.D., that he had supervised approximately 30 to 40 of these tests at this hospital and had not experienced any problems prior to this. Dr. Arebalo clarified for Dr. Hunter that if a patient has had any asthma in the past month or so, he no longer performs this test. Dr. Arebalo reiterated that he is qualified to do this test and that he was present during the entire test. He also stated that although poorly documented, there was a physical exam of this patient prior to the test.

Paul M. Briggs, Esq., made a statement to the Board on behalf of Dr. Arebalo. He reiterated that at the time, the hospital did not have a protocol for dobutamine and cannot speak for the hospital as to why it was using an old form that indicated the protocol.

Dr. Connell stated that the evidence does not support the allegations that Dr. Arebalo failed to inform the patient which medications to take prior to taking a stress test or that he negligently monitored patient during the stress test. However, Dr. Arebalo has not demonstrated that he has an adequate knowledge base to supervise this test. Dr. Arebalo failed to mention major contraindications, his knowledge of appropriate monitoring modalities during a test seemed deficient, as well as his knowledge of resuscitation. Dr. Connell stated that the applicable standard of care is that a physician supervising a stress test has adequate knowledge of monitoring parameters, the pharmacology of the drugs used and the pharmacology, and immediate treatment of adverse reactions. Dr. Connell stated that the potential harm would be cardiac or respiratory arrest. Dr. Connell recommended that the Board support a finding of Unprofessional Conduct for under A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, and (II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

FORMAL INTERVIEWS (Continued) - RONALD E. AREBALO, M.D.

MOTION: Patrick N. Connell, M.D., moved for a finding of Unprofessional Conduct for under A.R.S. § 32-1401(27) "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere: (q) Any conduct or practice that is or might be harmful or dangerous to the health of the patient or the public, and (II) Conduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.

SECONDED: Sharon B. Megdal, Ph.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

Dr. Connell recommended that the Board support a Letter of Reprimand for failure to properly evaluate and monitor a patient during a cardiac stress test, resulting in respiratory arrest. Dr. Connell also recommended a term of Probation for one (1) year to allow Dr. Arebalo to complete 20 hours of continued medical education (CME) in cardiac stress testing as approved by Board Staff. Dr. Connell clarified that the CME is in addition to the CME requirements for licensure. Dr. Connell further recommended that upon completion of the CME the Probation will expire. Edward J. Schwager, M.D., suggested that chemical cardiac stress testing in the motion as part of the 20 hours of (CME) as recommended by Dr. Connell. Dr. Connell agreed to amend his motion.

MOTION: Patrick N. Connell, M.D., moved for Board Staff to Draft Findings of Fact, Conclusions of Law, and Order for a Letter of Reprimand for failure to properly evaluate and monitor a patient during cardiac stress test, resulting in respiratory arrest and One year of CME probation to include 20 hours of CME in cardiac stress testing (including chemical cardiac stress testing and CME related to cardiovascular pharmacology) in addition to annual CME requirement; upon completion of the CME, the Probation will expire.

SECONDED: Sharon B. Megdal, Ph.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Member was absent when this matter was considered: Douglas D. Lee, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

FORMAL HEARING MATTERS (Continued)

NO.	CASE NO.	COMPLAINANT v PHYSICIAN		LIC. #	BOARD RESOLUTION
73.	MD-03-0248A MD-04-0081A	AMB	W. NEIL CHLOUPEK, M.D.	4553	Stayed Revocation. Suspension until successful completion of long-term in-patient treatment and meets with the Board for return to practice. Further probationary terms to be determined at that time. If respondent fails to complete treatment within twelve months, the stay will be lifted.

Douglas D. Lee, M.D. was not present when this matter was discussed.

Stephen Wolf, Assistant Attorney General, stated that there are three issues in this case. The first is Dr. Chloupek's treatment of the patient. The second issue is Dr. Chloupek's relapse into substance abuse. And third, considering the appropriate disciplinary action for this case. Mr. Wolf reviewed the details of this case with the Board. Dr. Chloupek has been evaluated three times and based on the results of the evaluations, Board Staff offered Dr. Chloupek the opportunity to enter into a consent agreement for practice restriction. He refused to sign the consent agreement and the Board summarily suspended Dr. Chloupek's license. Dr. Chloupek also refused to undergo treatment, although the Administrative Law Judge (ALJ) offered him the opportunity. Mr. Wolf recommended that Dr. Chloupek's license be revoked in order to protect the public.

W. Neil Chloupek, M.D., appeared before the Board without legal counsel. Dr. Chloupek stated that he was offered, by the ALJ, to go to a residential treatment and evaluation center, and then enter the Board's Monitored Aftercare Program (MAP) program in order to continue practicing medicine. However, Mr. Wolf stated that he would not accept that based on statute A.R.S. § 32-1452(g). Therefore, he did not enter treatment. Dr. Chloupek stated that he is willing to go to residential treatment for as long as necessary and surrender his license until treatment is completed. Dr. Chloupek stated that he will work with the Board in any way to keep his license, and will respect any decision that is made.

Edward J. Schwager, M.D., suggested the following grammatical corrections to the Findings of Fact:

- Paragraph 14: Delete the word "the" before Dr. Doe in the first sentence
- Paragraph 17: Delete Finding of Fact 17 based on state's request
- Paragraph 61; second sentence, fifth line: Change the words "until his has" to "until he has"

Sharon B. Megdal, Ph.D., stated for the record that she would be abstaining from the vote to adopt the Findings of Fact.

FORMAL HEARING MATTER (Continued) - W. NEIL CHLOUPEK, M.D.

MOTION: Ram R. Krishna, M.D., moved to adopt the Findings of Fact as recommended by the Administrative Law Judge with the corrections as stated above.

SECONDED: Patrick N. Connell, M.D.

VOTE: 10-yay, 0-nay, 1-abstain/recuse, 1-absent

MOTION PASSED.

Edward J. Schwager, M.D., suggested the following grammatical corrections to the Conclusions of Law:

- Paragraph 6: change "substantially bodily" to "substantial bodily"
- Paragraph 11: change sentence to, "Respondent may be assessed the costs of formal hearing in this matter as provided by A.R.S. § 32-1451(m)." and delete the first portion of the paragraph that reads, "Based upon the entire record in this matter, the ALJ concludes that".

MOTION: Ram R. Krishna, M.D., moved to adopt the Conclusions of Law as recommended by the Administrative Law Judge with the corrections as stated above.

SECONDED: Ingrid E. Haas, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

MOTION: Patrick N. Connell, M.D., moved for Stayed Revocation; Suspension until successful completion of long-term in-patient treatment and meets with the Board for return to practice; further probationary terms to be determined at that time; If respondent fails to complete treatment within twelve months, the stay will be lifted.

SECONDED: Ram R. Krishna, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Becky Jordan, Ram R. Krishna, M.D., Sharon B. Megdal, Ph.D., Dona Pardo, Ph.D., R.N., Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Member was absent when this matter was considered: Douglas D. Lee, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

MOTION: Patrick N. Connell, M.D., moved to reconsider the above motion to include hearing costs.

SECONDED: Robert P. Goldfarb, M.D.

VOTE: 11-yay, 0-nay, 0-abstain/recuse, 1-absent

MOTION PASSED.

MOTION: Patrick N. Connell, M.D., moved that the above motion remain, with the addition that the doctor is assessed hearing costs to be paid within twelve months.

SECONDED: Robert P. Goldfarb, M.D.

ROLL CALL VOTE was taken and the following Board Members voted in favor of the motion: Patrick N. Connell, M.D., Robert P. Goldfarb, M.D., Tim B. Hunter, M.D., Sharon B. Megdal, Ph.D., and Dona Pardo, Ph.D., R.N. The following Board members voted against the motion: Ram R. Krishna, M.D., Becky Jordan, Edward J. Schwager, M.D., William R. Martin, III, M.D., Ingrid E. Haas, M.D., and Chris Wertheim. The following Board Member was absent when this matter was considered: Douglas D. Lee, M.D.

VOTE: 5-yay, 6-nay, 0-abstain/recuse, 1-absent

MOTION FAILED.

Meeting adjourned at 4:23 p.m.

[Seal]

Barbara Kane, Assistant Director